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IN THE
COURT OF APPEALS OF INDIANA

ROGER GLENN GRAY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 69A04-0603-CR-142
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE RIPLEY SUPERIOR COURT
The Honorable James Morris, Judge
Cause No. 69D01-0405-FD-65

September 15, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Roger Glenn Gray (Gray), appeals his conviction for theft, as a Class D felony, Ind. Code § 35-43-4-2(a).

We affirm.

ISSUE

Gray raises one issue on appeal, which we restate as follows: Whether the State presented sufficient evidence to sustain his conviction.

FACTS AND PROCEDURAL HISTORY

On May 17, 2003, Gray met with Dennis Runshe (Runshe) to discuss working as a contractor for Runshe. The two agreed that Gray would construct a garage on Runshe's plot of land located at 4197 E. County Road, 950 South, Cross Plains, Indiana. After negotiating the price, Gray agreed to build the structure for $5,000.00. As requested, Runshe paid Gray $3,000.00 as a down payment to begin the construction. The remaining $2,000.00 was due upon completion of the project.

On May 23, 2003, Runshe told Gray he would like a patio added to the front and back of the structure. Runshe and Gray agreed on $1,300.00 for the patios; Runshe wrote Gray a check for the total amount. After Gray accepted the check, he failed to complete the patios. For several months, Runshe attempted to contact Gray to demand either his money back or the completion of the patios. On July 24, 2003, Runshe and Gray entered into an agreement whereby Gray was released from liability for all projects at Runshe's property, except the front and back patios.

On November 17, 2003, Runshe sued Gray in small claims court alleging that he "stole money, didn't do work." (Appellant's Br. p. 7). Runshe testified that he sued for losses caused to his property, totaling almost $8,000.00. However, $3,000.00 was the maximum amount Runshe could request in small claims court. The small claims court awarded Runshe a default judgment in the amount of $3,000.00. On December 17, 2003, following the civil judgment, Runshe contacted Officer James Wells (Officer Wells) of the Indiana State Police. Officer Wells contacted Gray and told him to complete the work on the patios or refund Runshe's $1,300.00. Gray did not do either. On March 28, 2004, Officer Wells requested that Gray report to the police station the following day, but he did not appear. Then, on March 31, 2004, Officer Wells contacted Gray and gave him a thirty-day grace period to complete the construction or refund the money. Gray installed the form boards for the patio, and made a $340.00 payment on the $3,000.00 civil judgment. Gray never poured the concrete or finished the work on the patios.

On May 10, 2004, the State filed an Information charging Gray with theft, as a Class D felony. On November 22, 2005, a bench trial was conducted. At the close of the evidence, the trial court found Gray guilty of theft. On January 18, 2006, the sentencing hearing was conducted; the trial court sentenced Gray to one and one half years executed, with six months suspended to probation. The trial court ordered Gray to pay $1,300.00 in restitution.

Gray now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Gray challenges the sufficiency of the evidence supporting his conviction for theft. Specifically, he asserts that the State failed to present sufficient evidence of unauthorized control or criminal intent. Our standard of review for a sufficiency of the evidence claim is well settled. In reviewing sufficiency of evidence claims, this court does not reweigh the evidence or assess the credibility of witnesses. *Cox v. State*, 774 N.E.2d 1025, 1028-29 (Ind. Ct. App. 2002). We consider only the evidence most favorable to the judgment, together with all reasonable inferences that can be drawn therefrom. *Alspach v. State*, 755 N.E.2d 209, 210 (Ind. Ct. App. 2001), *trans. denied*. The conviction will be affirmed if there is substantial evidence of probative value to support the conviction of the trier of fact. *Cox*, 774 N.E.2d 1028-29.

This court has held that a conviction for the crime charged may be based on circumstantial evidence. *Marrow v. State*, 699 N.E.2d 675, 677 (Ind. Ct. App. 1998). In particular, a theft conviction may be sustained by circumstantial evidence. *Hayworth v. State*, 798 N.E.2d 503, 507 (Ind. Ct. App. 2003). Reversal is only appropriate when reasonable persons would be unable to form inferences as to each material element of the offense. *J.J.M. v. State*, 779 N.E.2d 602, 605 (Ind. Ct. App. 2002).

Pursuant to I.C. § 35-43-4-2(a), a defendant is guilty of committing theft, as a Class D felony, if the person "knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use." Thus, in order to convict Gray of theft, the State was required to prove beyond a reasonable doubt that Gray knowingly or intentionally exerted unauthorized

control over $1,300.00 belonging to Runshe, with the intent to deprive him of any part of its value or use. *See* I.C. § 35-43-4-2(a).

In the present case, Gray contends he did not exert unauthorized control over Runshe's $1,300.00. Specifically, he asserts that Runshe received value exceeding $1,300.00. We disagree. A person's control over property is unauthorized if it is exerted (1) without the other's consent; (2) in a manner other than to which the other person has consented; (3) by creating a false impression in the other person; or (4) by promising performance that the person knows will not be performed. I.C. § 35-43-4-1(b).

Here, the evidence shows that Gray accepted a check for $1,300.00 for the purpose of constructing two patios. After Gray received the check, he did not complete the patios as agreed. Over the course of almost a year, Runshe attempted to contact Gray to either get him to complete the patios or to return the money, to no avail. Further, after Runshe contacted the Indiana State Police, who in turn contacted Gray and told him to complete the patios or return the money, Gray failed to comply. Additionally, Gray admitted during his testimony at the bench trial that he accepted $1,300.00, but did not perform as agreed. At the bench trial, the following exchange took place regarding the accusation that Gray failed to complete work for which he was paid:

> [GRAY]: [I]t was my responsibility to go down there and do it for something I got paid for[.]
>
> [STATE'S COUNSEL]: But you never did it, did you. . .But you never completed the work, did you?
>
> [GRAY]: No, I did not.

(Transcript p. 89-90).

Accordingly, we find that a fact finder could reasonably conclude that Gray exerted unauthorized control over Runshe's $1,300.00 when he failed to complete the patios or return the money.

Next, Gray asserts that the State failed to prove criminal intent. "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." I.C. § 35-41-2-2(a). This court has held that intent, without a confession, must be determined from a consideration of the conduct, and the natural consequences of the conduct. *Hayworth*, 798 N.E.2d at 508. Intent may be inferred from a defendant's conduct and the natural and usual sequence to which such conduct logically and reasonably points. *Id*. Here, as previously mentioned, besides Gray's admission, the evidence leads to the inference that Gray intended to exert unauthorized control over Runshe's $1,300.00 when he took the money, but failed to perform the work or return the money. Therefore, we find that there was sufficient evidence presented by the State to prove beyond a reasonable doubt that Gray knowingly and intentionally exerted unauthorized control over Runshe's $1,300.00. Thus, we will not disturb the trial court's judgment.

CONCLUSION

Based on the forgoing, we conclude that the State presented sufficient evidence to sustain Gray's conviction.

Affirmed.

BAILEY, J., and MAY, J., concur.